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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/851,480	05/09/2001	William T. Florence	18360/234317	3771
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ALSTON & BIRD LLP BANK OF AMERICA PLAZA 101 SOUTH TRYON STREET, SUITE 4000 CHARLOTTE, NC 28280-4000				
EXAMINER				
JEANTY, ROMAIN				
ART UNIT		PAPER NUMBER		
3624				
MAIL DATE		DELIVERY MODE		
06/16/2010		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

09/851,480

**Applicant(s)**

FLORENCE, WILLIAM T.

**Examiner**

Romain Jeanty

**Art Unit**

3624

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 2/10/2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1, 4, 9, 11, 16, 20, 21, 24, 29, 30 and 40 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.

- 6) ☒ Claim(s) 1, 4, 9, 11, 16, 20, 21, 24, 29, 30 and 40 is/are rejected.

- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.

- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☒ Information Disclosure Statement(s) (PTO-85/86)  
Paper No(s)/Mail Date 2/1/2010
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_  
5) ☐ Notice of Informal Patent Application  
6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

1. A request for continued examination under 37 CFR 1.114 was filed in this application after appeal to the Board of Patent Appeals and Interferences, but prior to a decision on the appeal. Since this application is eligible for continued examination under 37 CFR 1.114 and the fee set forth in 37 CFR 1.17(e) has been timely paid, the appeal has been withdrawn pursuant to 37 CFR 1.114 and prosecution in this application has been reopened pursuant to 37 CFR 1.114. Applicant's submission filed on February 10, 2010 has been entered.

### ***Information Disclosure Statement***

2. The information disclosure statement (IDS) submitted on February 1, 2010 is being considered by the examiner.

### **Claim Rejections - 35 USC 103**

3. Claims 1, 4, 9, 11, 16, 24, 29 and 40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tsukuda (US Patent No. 6,085,170) in view of David (Core Competency).

As per claims 1, 9, 16, most delivery systems provide time windows for recipient to receive particular items (i.e., the time window may be the days of the week or weekends). Overlapping time windows are time periods within a given day. System for providing a delivery time is well known in the art. For example, Tsukuda discloses a delivery system for managing delivery of goods from a distribution center. In so doing,

Tsukuda discloses a delivery managing system in which an individual may choose a delivery time with the obvious difference that receiving choices from a plurality of overlapping time windows are not made by a recipient. David teaches a system in which a customer (the examiner interprets the customer as "recipient") selects a delivery date. It would have been obvious to a person of ordinary skill in the art to modify the disclosures of Tsukuda to include an overlapping time window being selected by a recipient/customer as evidenced by David in order to allow a recipient to receive a particular package at a time that would be available to receive it.

As per claims 2, 10, Tsukuda does not expressly disclose providing each recipient with a plurality of time windows that include at least two sequential time windows and at least one overlapping time window that overlaps a portion of each of the sequential time windows. However, Tsukuda discloses the date and time for scheduling a delivery (col. 5, lines 26-46). In addition, David teaches a system in which a customer. It would have been obvious to a person of ordinary skill in the art to modify the disclosures of Tsukuda to include an overlapping time window being selected by a recipient as evidenced by David in order to allow a recipient to receive a particular package at a time that would be available to receive it.

As per claims 4, 11, Tsukuda does not expressly disclose providing each recipient with a plurality of time windows that include at least two sequential one-hour time windows and at least one overlapping time window that overlaps each of the sequential time windows by one-half hour. However, Tsukuda discloses the date and time for scheduling a delivery (col. 5, lines 26-46). In addition, David teaches a system

in which an overlapping time is used (i.e. the time can be half-hour, 1 hour, 1.5 hour, 2 hours, 2.5 hours, etc). Note entire page 2 of David. It would have been obvious to a person of ordinary skill in the art to modify the disclosures of Tsukuda to include an overlapping time window being selected by a recipient as evidenced by David in order to allow a recipient to receive a particular package at a time that would be available to receive it.

As per claims 24 and 40, most delivery systems provide time windows for recipient to receive particular items (i.e., the time window may be the days of the week or weekends). Overlapping time windows are time periods within a given day. System for providing a delivery time is well known in the art. For example, Tsukuda discloses a delivery system for managing delivery of goods from a distribution center. In so doing, Tsukuda discloses a delivery managing a delivery system in which an individual may choose a delivery time with the obvious difference that receiving choices from a plurality of overlapping time windows are not made by a recipient. David teaches a system in which a customer (the examiner interprets the customer as "recipient") selects a delivery time within a window. Tsukuda further teaches an Internet (most Internet system comprises of a webpage). It would have been obvious to a person of ordinary skill in the art to modify the disclosures of Tsukuda to include an overlapping time window being selected by a recipient/customer as evidenced by David in order to allow a recipient to receive a particular package at a time that would be available to receive it.

As per claim 29, Tsukuda disclose a scheduling engine to determine whether a maximum number of orders to be delivered within one of said plurality of time windows

has been reached (i.e., list of the scheduled date and time for delivery) (col. 5, lines 15-25).

4. Claims 20-21, and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tsukuda (US Patent No. 6,085,170) in view of David (Core Competency) and further in view of Smith et al "Smith" (US Patent No. 6,879,962).

As per claims 20, 21 and 30, the combined references of Tsukuda and David does not expressly disclose determining which time windows of said plurality have associated with them the least cost of service in making the delivery and determining whether the cost of delivering the item within a time window of said plurality is less than a monetary threshold. Smith in the same field of endeavor discloses the concept of a least cost of service in making a delivery (col. 2, lines 33-46). It would have been obvious to a person of ordinary skill in the art to modify the disclosures of Tsukuda and David to incorporate the teachings of Smith in order to determine a minimum cost of delivering a package.

### ***Conclusion***

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Romain Jeanty whose telephone number is (571) 272-6732. The examiner can normally be reached on Mon-Thurs 7:30 am to 6:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kambiz Abdi can be reached on (571) 272-6702. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Romain Jeanty/  
Primary Examiner, Art Unit 3624  
May 24, 2010